Microsoft

The Hon Malcolm Turnbull MP
Minister for Communications
Parliament House
Canberra ACT 2600

18 December 2013

Re: Deregulation Initiatives in the Communications Sector

Dear Minister,

Thank you for the opportunity to respond to your request for information regarding ideas about reducing regulation in the Communications portfolio.

Microsoft's response is focused primarily at the second category of longer term regulatory changes and is detailed at Attachment A.

We do however also have some immediate concerns with the creation of new regulatory mechanisms for social media; and also call on the government to resist calls for the extension of legacy regulatory mechanisms for new services.

Our comments encompass:
-    Measures to introduce new social media regulation;
-    Possible regulatory impediments to cloud adoption in Federal Government;
-    Ongoing reform and regulatory harmonisation of content codes and classification; and
-    Extension of legacy regulation.

Many of these comments we have raised previously with you and the Department and we look forward to continuing a constructive dialogue on many of these issues.

Finally, I would like to take this opportunity to commend you and your Parliamentary Secretary, the Hon Paul Fletcher MP on this positive and proactive outreach to industry.

Yours sincerely

Pip Marlow
Managing Director

ATTACHMENT A

MICROSOFT'S RESPONSE TO THE REQUEST FOR DEREGULATION INITIATIVES IN THE COMMUNICATIONS SECTOR

Measures to introduce new social media regulation

We are concerned about the Government's intention to legislate for a complaints system to 'get harmful material down fast' from large social media sites. We believe this is an unnecessary regulatory burden on the providers of innovative, collaborative tools, who have existing complaints handling protocols to address offensive conduct. Microsoft and other technology leaders with social networking functionality in their products committed to a voluntary complaints handling protocol under the previous Government, which by all reports is working well. Any further regulation is unnecessary and would run counter to the Government's stated deregulation agenda.

Furthermore, the step of legislating in this area is fraught. Difficult questions will arise if the Government attempts to define what constitutes a 'large social media site', what constitutes 'harmful material', who makes the determination and how the Government prevents the potential for political censorship of social media.

Possible regulatory impediments to cloud adoption in Federal Government

We understand that the Federal Government, quite rightly, has a requirement for strong protective security policies and practices, particularly in relationship to sensitive and classified information assets.

We, do however, also feel that agencies should be able to leverage security guidance to make their own risk-based assessments on whether to utilise cloud services.

To this point, the *Australian Government Policy and Risk management guidelines for the storage and processing of Australian Government information in outsourced or offshore ICT arrangements* released earlier this year has added an additional hurdle for agencies' consideration of cloud computing services.

These guidelines, released in June 2013 - added the requirement for agencies to seek both the approval of their portfolio Minister and the Attorney-General before entering into arrangements for the hosting offshore of any information that is privacy protected.

This guidance has not only added a procedural barrier into the consideration of offshore hosted cloud services for non-security classified data; it has created confusion around the privacy requirements of agencies and putting the Federal Government's internal guidance on cloud at odds with the more constructive guidance of the Office of the Australian Information Commissioner.

While this is not regulation that falls within the Communications portfolio, we feel it is worth drawing the portfolio's attention to, given the Minister's express desire to have a "more aggressive take up" of cloud within government agencies.

Ongoing reform and regulatory harmonisation of content codes and classification

Despite a number of attempts to streamline content regulation and classification, the situation remains that consumers accessing content on a convergent device (smartphone, tablet or next generation games console like Microsoft's Xbox One) need to be aware of how that content is being delivered (ie. via the Internet, walled garden or broadcast) to understand which regulatory regime is relevant.

This extends to circumstance where the same content is subject to very different content regimes, such as the same television show watched via broadcast television; streamed or downloaded online; or bought on DVD (Part 9 and Schedules 5 and 7 of the Broadcasting Services Act 1992; Classification (Publications, Films and Computer Games) Act 1995).

There are some industry-led initiatives to improve the ability for content to be pre-classified at development and also technological measures that will enable consumers to better manage their own, and their children's access to content.

For the last 3 years, a number of overseas game rating bodies, including ESRB and PEGI, have been working with industry on an international approach to game classification that will cater for the high frequency of game and electronic content releases now made possible through digital distribution. The project is currently known as the International Age Rating Coalition, or IARC.

IARC requires a developer/publisher/distributor to answer a number of questions about the content in a game or application and a rating that is relevant to each participating territory, is generated for the game. The game is given a unique certificate which is recognized by participating online storefronts to display the relevant classification for the game.

Microsoft is working very closely on the development of IARC, globally and with the Interactive Games and Entertainment Association (IGEA) and is supportive of its objectives.

In addition, Microsoft has for more than 15 years developed and deployed "parental controls" in a broad range of our products and services. Inclusion of such features and functionality, which Microsoft now broadly refers to as "family safety," is based on extensive ongoing market research.

We are increasingly moving to make these controls consistent across our services and platforms – including Windows 8.1, Windows Phone and Xbox One.

In the longer term we believe that these developments may open up opportunities to streamline content regulation in Australia and we commit to keeping the Department informed of these developments.

Extension of legacy regulation

Microsoft has seen a push in some jurisdictions to extend legacy telecommunications regulations, and law enforcement intercept and access frameworks towards IP-based or over the top services (for example, Skype) – creating complex compliance challenges for services that were never designed to function like a 20th century telecommunications carriage service, and potentially inhibiting aspects of their future development

If there is a demonstrated need to introduce a framework for over the top service providers alongside their traditional telco counterparts, Microsoft would strongly support working with the Government to replace legacy regulation with more flexible self-regulatory or co-regulatory arrangements that recognise the unique architectural features, and global delivery mechanisms, of over the top services.

While we see a very open and constructive relationship between network providers and content and over the top service providers, we support any Government efforts that ensure that consumers and businesses continue to benefit from innovation in global network-based services.

To this aim, Microsoft is supportive of the Joint UN/OSCE/OAS/ACHPR Declaration on Internet Freedoms, particularly section 5 on network neutrality, which states:

> *(a) There should be no discrimination in the treatment of Internet data and traffic, based on the device, content, author, origin and/or destination of the content, service or application*
>
> *(b) Internet intermediaries should be required to be transparent about any traffic or information management practices they employ, and relevant information on such practices should be made available in a form that is accessible to all stakeholders*

A number of Government's have actively adopted net neutrality principles as a framework to assess future regulation. Microsoft itself encourages regulators to adopt the following principles:

Openness
- Ensure consumers are able to use their broadband Internet access connections to access lawful content, applications and services of their choice and to connect to and use any lawful device.

Non-discrimination
- Discriminatory practices by broadband providers that are anti-competitive and harm consumers should be prohibited. Discriminatory practices do not benefit consumers, worsen the digital divide and society does not fully benefit from the investment in next generation broadband networks.

Choice
- Allow network operators to offer service enhancements and tiers of services, either to consumers or to online service providers. There is scope for public and managed / specialised Internet access services to coexist so that consumers have choices.

Transparency
- Traffic management should be the exception rather than the norm. Reasonable traffic management principles should be narrowly defined only for legitimate purposes and be disclosed to consumers.

Enforcement
- Create an expert and efficient enforcement mechanism that addresses discrimination issues as they arise on a case by case basis.